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RFC

THIS DISPOSITION IS NOT
CITABLE AS PRECEDENT OF THE TTAB MAY 31, 2000

U.S. DEPARTMENT OF COMMERCE
PATENT AND TRADEMARK OFFICE

Trademark Trial and Appeal Board

In re Log Cabin Homes Ltd.

Serial No. 75/031,370

David L. Just of Lucas & Just for Log Cabin Homes Ltd.

Janice McMorrow, Trademark Examining Attorney, Law Office
104 (Sydney Moskowitz, Managing Attorney).

Before Cissel, Quinn and Bucher, Administrative Trademark
Judges.

Opinion by Cissel, Administrative Trademark Judge:

On November 27, 1995, applicant applied to register
the mark "TIMBER HOUSE" in connection with "prefabricated
homes and parts therefor," in Class 19. The basis for the
application was applicant's assertion that it possessed a
bona fide intention to use the mark in commerce in
connection with these goods.

On April 3, 1996, prior to the issuance of the first Office Action, applicant filed an amendment to allege use of the mark in commerce between the United States and a foreign country at least as early as August of 1995.

The specimens submitted with the amendment appear to be blueprints. They feature the following information along the heading bar on the right side: "PRELIMINARY BLUEPRINT NOT INTENDED FOR CONSTRUCTION USE." The title of the four elevation drawings shown on the blueprints is "THE ORIGINAL LOG CABIN HOMES Ltd. CUSTOM DESIGN HOME FOR: TIMBERHOUSE HIGHLAND PROJECT." The amendment to allege use states that the mark is used "by applying it to the goods; or containers or packages for the goods; or displays associated with the goods; or tags or labels affixed to the goods."

The Examining Attorney refused registration under Section 2(e)(1) of the Lanham Act on the ground that the mark is merely descriptive of the goods with which applicant uses it. In the alternative, the Examining Attorney refused registration under the same section of the Act on the ground that if the goods sold by applicant under the mark are made of metal, then the mark is deceptively misdescriptive of them. Additionally, the Examining Attorney required modification to the identification-of-

goods clause and requested that additional specimens of use be submitted because the record did not indicate how the blueprints are encountered by purchasers of applicant's products. Attached to the first Office Action was a copy of a dictionary definition showing the word "timber" as meaning "wood as a building material."

Applicant responded by amending the identification-of-goods clause to read as follows: "prefabricated homes and parts therefore sold together as a unit," in Class 19. In addition, applicant requested that a disclaimer of the word "HOUSE" be entered into the record, and argued that the mark in its entirety is neither merely descriptive nor deceptively misdescriptive of applicant's houses. Further, applicant offered to amend the application to indicate that the specimens are "blueprints."

In response, the Examining Attorney withdrew the refusal based on misdescriptiveness. The refusal based on descriptiveness, however, was maintained, as was the requirement for acceptable specimens. At that juncture, the Examining Attorney also noted that the drawing submitted with the application showed the mark as "TIMBER HOUSE," whereas the specimens of record presented the mark as one word, "TIMBERHOUSE." Applicant was advised either to submit a new drawing which agreed with the specimens or

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to submit substitute specimens which show use of the mark as presented in the drawing, but that the disclaimer of the word "HOUSE" should be deleted if the drawing were amended to show the mark as a single word.

Responsive to the second Office Action, applicant submitted a new drawing showing the mark as one word, and withdrew the previously submitted disclaimer of the word "HOUSE." Applicant argued that the blueprints submitted as specimens are in the nature of promotional materials which are distributed to prospective purchasers of applicant's prefabricated homes, and are therefore acceptable under Section 905.04 of the Trademark Manual of Examining Procedure (TMEP), which allows an applicant to submit "documents associated with the goods or their sale" in circumstances where "the nature of the goods" makes use of labels, tags, containers or displays associated with the goods "impractical."

The Examining Attorney responded by making final both the refusal based on Section 2(e)(1) of the Act and the requirement for acceptable specimens. Submitted as additional support for the refusal based on descriptiveness were excerpts from a number of stories retrieved from the Nexis® database of publications. These excerpts show

"prefabricated timber houses" used to describe prefabricated homes made of timber.

Applicant timely filed a notice of appeal. Both applicant and the Examining Attorney filed briefs, and the above-referenced oral hearing before the Board was conducted.

The issues on appeal are whether the mark "TIMBERHOUSE" is merely descriptive of prefabricated homes and parts therefor sold together as units, within the meaning of Section 2(e)(1) of the Lanham Act, and whether the requirement for additional specimens is proper. Based on careful consideration of the record and arguments before us in this case, we hold that the both the requirement for additional specimens and the refusal under Section 2(e)(1) of the Act are appropriate.

Turning first to the question of descriptiveness, we note that the test for whether a mark is unregistrable under Section 2(e)(1) of the Lanham Act is whether the mark, as used in connection with the goods set forth in the application, immediately describes an ingredient, quality, characteristic or feature of the goods, or directly conveys information regarding the nature, function, purpose or use of the goods. In re Abcor Development Corp., 588 F.2d 811, 200 USPQ 215 (CCPA 1978).

Applicant's mark, "TIMBERHOUSE," when used in connection with applicant's prefabricated houses, is merely descriptive because it immediately conveys the fact that a feature or characteristic of these houses is that they are made of timber. The definition made of record by the Examining Attorney establishes that timber is used as a building material, and the blueprints submitted by applicant, although they do not meet the legal requirements to be considered as acceptable specimens in connection with an application to register the mark for these goods, do show that applicant's homes are made of timber. The blueprint notes in several places that "log siding" and logs made of western red cedar are features of applicant's products. While applicant is correct in noting that many of the excerpts of articles retrieved by the Examining Attorney are entitled to little weight because they are taken from publications outside of the United States, several of the other excerpts use terminology which makes it clear that timber houses are sold in this country. Moreover, home buyers are likely to attribute the ordinary meanings of "timber" and "house" to these words as they are used in the term applicant seeks to register, and the combination of these meanings results in the obvious descriptive meaning of "TIMBERHOUSE." As the Examining

Attorney points out, there is nothing indefinite, unexpected or incongruous about the mark, and no amount of thought or imagination is necessary to determine the characteristic or feature of the goods to which the mark refers. The mark is simply a combination of two terms which are merely descriptive of applicant's goods, and the composite does not create a separate, different, or nondescriptive meaning.

We turn next to the requirement for acceptable specimens. Section 1(d)(1) of the Lanham Act requires an applicant who bases his application on use of the mark in commerce to submit specimens showing how the mark is used. Trademark Rule 2.56(b)(1) provides that a label, tag, or container for the goods, or a display associated with the goods may be an acceptable specimen. Further, the rule notes that the Office "may accept another document related to the goods or the sale of the goods when it is not possible to place the mark on the goods or packaging for the goods."

Applicant argues both that the preliminary blueprints submitted as specimens are acceptable because they are displays associated with the goods, and that they should be considered to be acceptable specimens because homes, which are the goods specified in the application, are not

products which are typically labeled, tagged, or sold in containers. Applicant asserts that these blueprints are not the formal blueprints used for construction, but rather, that they are acceptable specimens because they are point-of-purchase displays which are given to potential customers, in person at applicant's model homes, as part of the effort to sell applicant's products.

The specimens submitted by applicant may well constitute point-of-purchase displays within the meaning of the Act and the precedent in this regard. The problem is that to be acceptable specimens, they must show the mark used in connection with the goods. It is not at all clear, however, that applicant's use of "TIMBERHOUSE" on these specimens satisfies this requirement. If anything, the blueprints seem to indicate that the house depicted thereon is a custom designed home to be built in something called the "TIMBERHOUSE HIGHLAND PROJECT," so even if the specimens are considered to be displays, they still are not acceptable because they fail to show "TIMBERHOUSE" used as a mark in connection with the goods specified in the application, prefabricated houses and parts therefor.

Accordingly, the requirement for applicant to submit specimens which show the mark used as a trademark for the goods set forth in the application is appropriate.

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DECISION: Both the refusal to register under Section 2(e)(1) of the Lanham Act and the requirement for acceptable specimens are affirmed.

R. F. Cissel

T. J. Quinn

D. E. Bucher
Administrative Trademark Judges
Trademark Trial & Appeal Board

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